



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Re: Appeal to the Board of Patent Appeals and Interferences

AF
SF

In re PATENT application of
RAVISHANKAR et al.

Group Art Unit: 2152

Application No. 09/820,884

Examiner: LESNIEWSKI, Victor D

Filed: March 30, 2001

Docket : 95-461

Title: MESSAGING SYSTEM CONFIGURED FOR SELECTIVELY ACCESSING SUBSCRIBER
SPOKEN NAME FROM A DIRECTORY SERVER BASED ON DETERMINED UNAVAILABILITY
OF MESSAGING SERVER

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Date: August 8, 2007

Sir:

- 1 ☐ **NOTICE OF APPEAL:** Applicant hereby appeals to the Board of Patent Appeals and Interferences from (not Advisory Action) dated September 21, 2005 of the Examiner rejecting claims 1-33. [] ATTACHED: Pre-Appeal Brief Request
- 2 ☐ **BRIEF** on appeal in this application attached.
- 3 ☐ An **ORAL HEARING** is respectfully requested under Rule 194 (due two months after Examiner's Answer unextendable).
- 4 ☒ Reply Brief is attached (due two months after Examiner's Answer -- unextendable).

5. FEE CALCULATION:		Large/Small Entity	
If box 1 above is X'd, see box 12 below <u>first</u> and decide: enter		\$500/250*	\$
If box 2 above is X'd, see box 12 below <u>first</u> and decide: enter		\$500/250*	\$
If box 3 above is X'd, see box 12 below <u>first</u> and decide: enter		\$1000/500*	\$
If box 4 above is X'd, enter nothing		- 0 - (no fee)	
6. Original due date: August 8, 2007			
7. Petition is hereby made to extend the original due date to cover the date this response is filed for which the requisite fee is attached		(1 mo) \$120 (2 mos) \$450 (3 mos) \$1020 (4 mos) \$1590	+
8. Enter any previous extension fee paid [] previously since above <u>original</u> due date (item 6); [] with concurrently filed amendment		-	
9. Subtract line8 from line7 and enter: Total Extension Fee			+0
10. TOTAL FEE ATTACHED =			\$ 0.00

11. ☐ *Fee **NOT** required if/since paid in prior appeal in which the Board of Patent Appeals and Interferences did not render a decision on the merits.

CHARGE STATEMENT: The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficient fee only) now or hereafter relative to this application and the resulting Official document under Rule 20, or credit any overpayment, to our Account/Order No. 50-1130/95-461 for which purpose a duplicate copy of this sheet is attached. This CHARGE STATEMENT does not authorize charge of the issue fee until/unless an issue fee transmittal form is filed

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Docket No.: 95-461

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of :
RAVISHANKAR et al. :
Serial No.: 09/820,884 : Group Art Unit: 2152
Filed: March 30, 2001 : Examiner: LESNIEWSKI, Victor D

For: MESSAGING SYSTEM CONFIGURED FOR SELECTIVELY ACCESSING
SUBSCRIBER SPOKEN NAME FROM A DIRECTORY SERVER BASED ON
DETERMINED UNAVAILABILITY OF MESSAGING SERVER

MAIL STOP: APPEAL BRIEF – PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

Appellant submits this Reply Brief within two months from the Examiner Answer mailed June 8, 2007, in accordance with 37 C.F.R. §41.41.

As demonstrated below, the Examiner's Answer fails to demonstrate that "there was an apparent reason to combine the known elements *in the fashion claimed* by the [claims] at issue [where] this *analysis should be made explicit*." *KSR Int'l v. Teleflex, Inc.* No. 04-1350, Slip. op. at 14, 82 USPQ2d 1385, 1396 (U.S. Apr. 30, 2007). In particular, the entire obviousness analysis in the Examiner Answer fails to articulate any reasoning or *rational* basis, as required by the Federal Circuit and the Supreme Court.¹ To the contrary, the Examiner's Answer relies on

¹ "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to

unfounded and inconsistent statements that demonstrate a tortured interpretation of the references,² and an unreasonable interpretation of the claims³ that disregards explicitly claimed features.⁴

Review of Claim Language

As argued in detail in the Appeal Brief filed January 19, 2007, each of the independent claims 1, 12, 19, and 30 specify a server attempting retrieval of a subscriber announcement from a *messaging server*, where the subscriber announcement is stored in the messaging server as a

support the legal conclusion of obviousness.” *KSR Int’l v. Teleflex, Inc.* No. 04-1350, Slip. op. at 14, 82 USPQ2d 1385, 1396 (U.S. Apr. 30, 2007) (*quoting In re Kahn*, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006))

²“A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” MPEP §2141.02, page 2100-132 (Rev. 3, Aug. 2005) (*citing W.L. Gore & Assoc. v. Garlock, Inc.*, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984))(emphasis in original).

³“During patent examination, the pending claims must be ‘given their broadest reasonable interpretation consistent with the specification.’” MPEP §2111 at 2100-46 (Rev. 3, Aug. 2005) (*quoting In re Hyatt*, 211 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000)).

“The broadest reasonable interpretation of the claims must also be consistent with the interpretation that those skilled in the art would reach.” MPEP §2111.01 at 2100-47 (Rev. 3, Aug. 2005) (*citing In re Cortright*, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999)).

⁴It is well settled that each and every claim limitation must be considered. As specified in MPEP §2143.03, entitled “**All Claim Limitations Must Be Taught or Suggested**”: “To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). ‘All words in a claim must be considered in judging the patentability of that claim against the prior art.’ *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).” MPEP §2143.03 at 2100-131 (Rev. 5, Aug. 2006).

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first data file having a first size.⁵ Each of the independent claims also specify retrieving an audible subscriber identifier, stored in the *directory* server, and playing for the messaging session an alternate subscriber announcement having the audible subscriber identifier, based on a determined *inaccessibility* of the **stored subscriber announcement** that is stored **in the messaging server**.

Hence, each of the independent claims explicitly specify that the audible subscriber identifier is retrieved from the directory server based on the determined *inaccessibility* of the stored subscriber announcement from the messaging server; consequently, the audible subscriber identifier is played as part of an “*alternate* subscriber announcement”.

Inconsistent Arguments Demonstrate a Disregard for Claim Language

As described in further detail below, the rejections and arguments presented in the Examiner Answer demonstrate a disregard for explicit claim language.

Inconsistent arguments presented in the Examiner Answer demonstrate that the lack of any rational basis to support a conclusion of obviousness, as required by the Supreme Court. On the one hand, the Examiner Answer first acknowledges that the claims require that the stored subscriber announcement be determined as “inaccessible”, and that the operation of the server itself is not relevant. In particular, the Examiner Answer states that “just because the announcement is stored on a messaging server does not imply that *any determination is made about the operation of the server itself*. The claim states determining an inaccessibility of the

⁵Claims 1, 19, and 30 each specify “attempting retrieval of a subscriber announcement for the messaging session from a messaging server ..., the subscriber announcement stored in the messaging server as a first data file having a first size”.

Claim 12 specifies “a first executable resource configured for attempting access to a messaging server according to a first open standard protocol, the messaging server storing a first file having a first size and that includes a subscriber announcement for a messaging session”.

subscriber announcement, i.e., it is the ***announcement*** that is inaccessible and not the server.” (Page 14, lines 15-18 of Examiner Answer).⁶

On the other hand, the Examiner Answer presents another argument inconsistent with the first argument *supra* by arguing that the inaccessibility of the server *should* be relevant: the Examiner Answer urges that: “Kruesi’s system clearly determines an inaccessibility of a voice file *at a certain node*” (e.g., Examiner Answer at page 14, lines 1-2); that “[a]lthough Kruesi states accessing the file *at an alternate node*, he still meets the claim limitation because the file is inaccessible (a determined inaccessibility) *at the first node*. The claim states ‘determining an inaccessibility’ [*sic*] and this can reasonably [*sic?*] be read in relation to one node...” (Examiner Answer at page 14, lines 5-8); and that “Clearly [*sic*], Kruesi’s system determines an inaccessibility, as when a first node fails, the file is inaccessible *at that node*” (Examiner Answer at page 14, lines 10-11).

The argument that “the claim states ‘determining an inaccessibility’” in a vacuum (i.e., “can reasonably be read in relation to one node” or “inaccessible at that node”) demonstrates a complete disregard for the explicit claim limitations: the claims do not specify determining an inaccessibility “at” a node, or “by” a node; rather, the claims explicitly require determining an inaccessibility of the ***stored subscriber announcement***,⁷ where the determined inaccessibility is based on the *attempted access, from the messaging server* by the claimed server, of the subscriber announcement ***stored in the messaging server***.⁸ Further, the specification also

⁶Appellant stipulates that the claims require that the determined inaccessibility is with respect to the inaccessibility of the subscriber announcement stored *in* the messaging server determined based on the attempted retrieval of the subscriber announcement *from* the messaging server, and does not require that the messaging server *in toto* be inaccessible.

⁷See footnote 5 *supra*.

⁸Independent Claims 1, 19, and 30 specify “*attempting retrieval* of a subscriber announcement for the messaging server from a messaging server ... *the subscriber announcement stored in the messaging server*”; and “determining an inaccessibility of the subscriber announcement for the messaging session *from the messaging server*”.

illustrates in Fig. 1 that the server 14 attempts access of the subscriber announcements 20 stored *in* the IMAP messaging server 16, and determines that ***the stored subscriber announcements 20 cannot be retrieved*** for the messaging application 40 by the IMAP API 44, for example if the IMAP messaging server is unavailable (see, e.g., page 6, lines 25-26, page 8, lines 8-12, page 9, lines 9-23).

Hence, the statement in the Examiner Answer that “‘determining an inaccessibility’ ... can reasonably be read in relation to one node” disregards the explicit claim language (as conceded by the Examiner Answer at page 14, lines 15-18), is inconsistent with the specification, and therefore an unreasonable interpretation of the claims.⁹

For this reason alone the §103 rejection of independent claims 1, 12, 19 and 30 should be reversed.

Kruesi et al Teaches Away from Retrieving an Alternate Subscriber Announcement

The Supreme Court has recognized that “when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.” *KSR Int’l v. Teleflex, Inc.* No. 04-1350, Slip. op. at 12, 82 USPQ2d 1385, 1395 (U.S. Apr. 30, 2007).

The hypothetical combination per se teaches away from the claimed subject matter specified in the independent claims, because the Examiner Answer admits that Kruesi ***improves file availability***, thereby eliminating the necessity of any alternate subscriber announcement due to any “determined inaccessibility of the subscriber announcement”. For example, the Examiner

Independent Claim 12 specifies “a first executable resource configured for *attempting access* to a messaging server according to a first open standard protocol, *the messaging server storing a first file having a first size and that includes a subscriber announcement* for a messaging session;” and “a messaging application configured for ... attempting retrieval of *the subscriber announcement* [and] ... playing an alternate subscriber announcement ... based on a determined inaccessibility of *the subscriber announcement*.”

⁹See footnotes 3 and 4 *supra*.

Answer notes that “Kruesi’s teachings [are] that other nodes may still access the file” (page 14, line 19). The Examiner Answer cites column 3, lines 1-11 of Kruesi as satisfying the need for “improved file availability in a messaging system” (see, e.g., Examiner Answer at page 5, lines 3-4 and page 15, lines 5-6). The Examiner Answer further stresses that “the inaccessibility of a voice file as taught by Kruesi is one way of *improving file availability*.” (Examiner Answer at page 15, lines 11-12).

A review of the portion of Kruesi et al. *relied upon in the Examiner Answer* is instructive:

An important characteristic of a messaging system is that it be highly reliable and able to quickly recover from system failures. This characteristic is generally referred to as system “availability.” The present invention relates to a messaging system architecture that comprises *multiple redundant messaging nodes* in order to achieve high availability. In other words, the present invention was developed in the process of designing a messaging system that would *continue to provide access to messages stored in one disk file (say, voice file 12a)* even while its corresponding host (server/NAP 10a) is inoperative.

(Kruesi et al. at col. 3, lines 1-11)

Hence, the Examiner Answer relies on the teaching in Kruesi et al. that *multiple redundant messaging nodes* are relied upon to achieve improved file availability of a given voice file, for example voice file 12a. As described on page 16 of the Appeal Brief, Kruesi et al. ensures that voice file 1 is always accessible based on granting Node 2 of Fig. 5B read/write access in response to the failure of Node 1.

Given this teaching in Kruesi et al. (relied upon on the Examiner Answer) of achieving improved file availability, *plus* the teachings in Bates et al.¹⁰ and Fuller et al.¹¹ that consistently teach that *all* voice messages are stored on a single disk, the hypothetical combination teaches no more than providing *multiple redundant messaging nodes* (as taught by Kruesi et al.) to achieve

¹⁰See the Appeal Brief at pages 13-14 and 19-21.

¹¹See the Appeal Brief at pages 14-15 and 21-22.

“improved file availability” of a given file (e.g., voice file 1 of Kruesi et al.).¹² As described on page 15, lines 7-11 of the Examiner Answer:

One of ordinary skill in the art would clearly be motivated to combine the teachings at hand in order to improve file availability as this is a well known need in messaging systems and other works. Also, one of ordinary skill would understand that determining the inaccessibility of a voice file as taught by Kruesi is one way of improving file availability.

(Examiner Answer at page 15, lines 7-11) (emphasis added).

Hence, the hypothetical combination “satisfies the need for improved file availability” by ensuring that a *second* redundant messaging node can obtain read/write access to the given voice file.

Consequently, this hypothetical combination, that “satisfies the need for improved file availability,” has no need whatsoever for the claimed “retrieving from the directory server an *audible subscriber identifier*, based on the determined inaccessibility of the subscriber announcement”, in combination with “playing for the messaging session an *alternate* subscriber announcement *including the audible subscriber identifier*.” Hence, the “improved file availability” based on multiple redundant messaging nodes teaches away from the claimed “retrieving from the directory server an *audible subscriber identifier*, based on the determined inaccessibility of the subscriber announcement”, in combination with “playing for the messaging session an *alternate* subscriber announcement *including the audible subscriber identifier*.”

For this reason alone the §103 rejection of independent claims 1, 12, 19, and 30 should be reversed.

Piecemeal Analysis of the References and Evasive Comments in the Examiner Answer
Demonstrate an Impermissible Hindsight Analysis

The Examiner Answer applies a piecemeal and tortured analysis of the references, and refuses to consider the teachings of the references in their entirety, demonstrating an improper

¹²See the Appeal Brief at page 23.

hindsight analysis.¹³

For example, the Examiner Answer repeatedly refuses to consider the teachings of Kruesi et al. in its entirety, stating for example that “since Kruesi was *only cited* as teaching “determining an inaccessibility” as discussed above in the response to argument 1, *the discussion of Kruesi in relation to storage on distinct device is considered moot.*” (Page 18, lines 11-13). The “response to argument 1” was that “Kruesi, [F]igure 5B and column 9, line 52 through column 10, line 6, shows a similar determination for retrieving a voice file, but instead of determining whether the file is available, there is a determination whether the file is accessible *from a certain node.*” (Examiner Answer at page 11, line 19 to page 12, line 2). As argued on pages 5-7 *supra*, this assertion demonstrates a deliberate disregard of the explicit teachings of Kruesi relied on in the Examiner Answer that multiple redundant network nodes are relied on to retrieve a file.

Further, the Examiner Answer is deliberately evasive in addressing Appellant’s arguments on pages 12-14 of the Appeal Brief addressing the assertion in the rejection that Bates states “the ability of his system to retrieve a default greeting message and play this message *when a first particular greeting is unavailable*” (see Examiner Answer at page 4, lines 8-9). The reliance on col. 7, lines 13-16 of Bates for the purported assertion in the Examiner Answer at page 11, lines 18–19 that “Bates ... clearly states a determination of whether a pre-recorded greeting (i.e., subscriber announcement) is available for a caller is misplaced: col. 7, lines 13-18 *actually* states:

Block 70 depicts a determination as to whether or not *a pre-recorded greeting is designated for the caller ID* by the subscriber. If a pre-recorded greeting is *not designated* for the caller ID or a portion thereof, then the process passes to block 72. Block 72 illustrates playing a default greeting message according to the subscriber profile; and the process passes to block 76.

¹³“A factfinder should be aware, of course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning.” *KSR Int’l v. Teleflex, Inc.* No. 04-1350, Slip. op. at 17, 82 USPQ2d 1385, 1397 (U.S. Apr. 30, 2007) (citations omitted).

Hence, Bates does not teach or suggest determining whether a pre-recorded greeting is “available for the caller”, as suggested in the Examiner Answer.

Further, Appellant strenuously objects to the mischaracterization on page 13, line 1-5 that Appellant “acquiesced” to the issue of whether Bates disclosed determining “when a first particular greeting is unavailable”. No Letters Patent has yet issued, and therefore prosecution history estoppel does not yet apply. The Examiner Answer fails to identify any admission that explicitly states the Appellant had acquiesced to the Examiner’s position. In fact, the claims were amended in order to preclude the Examiner from continued application of the unreasonable interpretation that “unavailability” should include the logical interpretation of whether an existing subscriber announcement should be used (see Final Action mailed August 30, 2005 at para. 12 (pages 4-5), and Appellant’s Amendment filed October 31, 2005 at pages 8-10). In fact, this mischaracterization that Appellant “acquiesced” to this issue requires Appellant to repeat these arguments *infra* to ensure appropriate consideration on appeal.

The outstanding rejections *continue* to rely on Bates for the purported teaching of “the ability of his system to retrieve a default greeting message and play this message *when a first particular greeting is unavailable*”. Therefore this issue is not only relevant, but essential for the Examiner to establish a *prima facie* case of obviousness.

The Examiner Answer on page 12 also disregards the entire teachings of Bates: as argued on pages 11-12, the switching system 40 of Bates et al. does not provide any attempted retrieval, as asserted in the Examiner Answer. To the contrary, the Examiner Answer disregards col. 3, line 67 to col. 4, line 4, and col. 5, lines 18-33 that demonstrate that the application 22 is executed within the VMS 10. Hence, the VMS 10 plays the message retrieved from the disk 30 within the VMS 10. One skilled in the art would interpret the “switching system 40” as, in fact, a switch that connects devices and the network 46 (note it is the **telecommunications network 46** that can include the other terminals, switching systems and messaging systems, and not the switch 40).

The Examiner Answer on page 13 further evades any discussion of Fuller, merely

parroting that “one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references.” However the burden is on the Examiner to establish a *prima case* of obviousness, not on the Appellant to establish a *prima facie* case of nonobviousness. Further, the Examiner Answer continues to ignore the legal requirement that “a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention”.¹⁴ failure to do so demonstrates an impermissible hindsight analysis.

In addition, the Examiner Answer on page 17, lines 3-5 mischaracterizes the teachings of Fuller by stating “Fuller’s telephone control system (figure 2, item 1) ... maintains a plurality of servers or other processing devices *in order to effectuate messaging services*.” This statement is misleading, however, because Fuller specifies that the subscriber access facility 110,¹⁵ the communicator access facility 125,¹⁶ and the client services facility 130¹⁷ each “effectuate messaging services” based on *retrieving* the **master subscriber record 700** that is always stored in the **call processing facility (CPF) 100**. Hence, the hypothetical combination still teaches storing all messages on a single disk that is guaranteed access using *multiple redundant servers* (as taught by Kruesi et al.)

Therefore, the evasiveness in the Examiner Answer in addressing these issues demonstrates an impermissible piecemeal hindsight analysis. For this reason alone the §103 rejection of the independent claims should be reversed.

¹⁴See footnote 2 *supra*.

¹⁵See, e.g., Fig. 37a (steps 3710, 3712, 3720) and col. 54, lines 5-46 of Fuller et al.

¹⁶See, e.g., Fig. 39 (steps 3905, 3907) and col. 56, lines 27-28 and 44-56 of Fuller et al.

¹⁷See, e.g., Fig. 44 (steps 4402, 4406) and col. 60, lines 61-67 and col. 61, lines 13-34 of Fuller et al.

The Examiner's Interpretation of "Unavailability" Was and Continues to be Unreasonable

The Examiner Answer demonstrates on pages 4, 12 and 13 a *continued reliance* on the unreasonable interpretation that "unavailability" should include the logical interpretation of whether an existing subscriber announcement *should be used*, as originally specified in the Final Action mailed August 30, 2005 at para. 12 (pages 4-5). Since the Examiner Answer raised this issue for the first time on pages 13, this newly-revived issue is no longer moot, and Appellant is required to address this portion of the rejection in explicit detail to demonstrate that Appellant never acquiesced to this issue.¹⁸

The Examiner's original argument that "unavailability" reads on "not being designated for the call" demonstrates a deliberate disregard of the claimed feature by the server initiating the messaging session of "determining an unavailability of the subscriber announcement ... *from the messaging server*." The specification demonstrates that the term "unavailability" must be construed in the context of the unavailability of retrieving, *from the messaging server*, the subscriber announcement that is stored *in* the messaging server:

The application server includes a fault tolerant routine for initiating a messaging session, enabling playing of the subscriber's spoken name during the messaging session based on a determined *unavailability of the messaging server*.

(Page 4, lines 18-21).

As described below, the subscriber profile directory 22 is configured for storing, for each subscriber, subscriber profile information 24 that includes an alternate subscriber announcement 26 for use *[if] the subscriber announcements 20 stored in the messaging server 16 are unavailable*.

(Page 6, line 27 to page 7, line 2).

¹⁸Appellant further reserves the right to file a continuing application to continue prosecution of the claims as originally filed, *including* the recital of determining an "unavailability" of the subscriber announcement.

As previously described, problems may be encountered if the stored subscriber announcements 20 *cannot be retrieved* for the messaging application 40 by the IMAP API 44, *for example if the IMAP messaging server is unavailable*.

(Page 8, lines 8-10).

According to the disclosed embodiment, messaging services can be maintained, enabling the initiation of messaging sessions for recording messages, *even though a messaging server configured for storing subscriber announcements and stored messages is unavailable*.

(Page 10, lines 8-10).

In fact, the Title of the Invention *explicitly specifies* that the unavailability of retrieving the subscriber message (stored *in* the messaging server) *from* the messaging server can be based on the unavailability of the *messaging server* itself: “MESSAGING SYSTEM CONFIGURED FOR SELECTIVELY ACCESSING SUBSCRIBER SPOKEN NAME FROM A DIRECTORY SERVER **BASED ON DETERMINED UNAVAILABILITY OF MESSAGING SERVER**”.

Hence, the specification explicitly describes that the claimed unavailability relates to the inability by the claimed server of accessing, *from the messaging server*, a subscriber announcement stored *in* the messaging server. Any other interpretation (e.g., the Examiner’s suggestion that “unavailability” includes the logical determination whether the subscriber announcement *should* be used) would be inconsistent with the specification and the interpretation that those skilled in the art would reach, and hence would be unreasonable. Cf. In re Cortright, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999). Hence, “claims are not to be read in a vacuum, and limitations therein are to be interpreted *in light of the specification* in giving them their ‘broadest reasonable interpretation.’” MPEP § 2111.01 at 2100-37 (Rev. 1, Feb. 2000) (quoting In re Marosi, 218 USPQ 289, 292 (Fed. Cir. 1983)(emphasis in original)).

Further, the Examiner’s reference to “not being designated” in Bates et al. is not an attribute of “unavailability”, because the data is, in fact accessible, and therefore, “available”. Bates et al. assumes that all stored announcements are always available within a disk memory 30, and that the determined lack of an association between a received caller ID and one of the

personalized greetings results in the playing of the default greeting stored at the same location 30. Bates et al. teaches that all of the greetings (including the default greeting) utilized by a subscriber are stored in the same disk memory 30 of Figure 1 (column 4, lines 21-30). Hence, the data of Bates et al. is selected due to logic that specifies that a given announcement is not appropriate given the logical parameters that assign certain announcements to certain conditions.

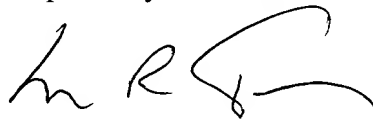
Consequently, none of the applied references, singly or in combination, teach or suggest the attribute of “unavailability” of a stored message, as relied on in the Examiner Answer. To the contrary, all of the applied references not only assume that all stored messages are always available, but Kruesi et al. *guarantees* that all stored messages are always available *and* accessible, thereby teaching away from the claimed “retrieving from the directory server an audible subscriber identifier, based on the determined inaccessibility of the subscriber announcement” and “playing for the messaging session an *alternate* subscriber announcement *including the audible subscriber identifier*.”

For this reason alone the §103 rejection of the independent claims should be reversed.

Conclusion

For at least the reasons set forth above, it is clear that Appellant’s claims 1-38 are patentable over the references applied. Accordingly the appealed claims 1-38 should be deemed patentable over the applied references. It is respectfully requested that this appeal be granted and that the Examiner’s rejections be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'L R Turkevich', with a stylized flourish at the end.

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August 8, 2007

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